

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

EVELIN GONZALEZ MELENDEZ

Plaintiff

v.

KMART CORPORATION

Defendant

CIVIL NO. 04-1067 (DRD)

**REPORT AND RECOMMENDATION**

Defendant's *Motion For Judgment on the Pleadings* (Docket No. 39) must be **DENIED**. The contention that Puerto Rico whistleblower statute, P.R. Laws Ann. tit. 29 §§ 194 et seq., does not encompass whistle blowing to federal entities in the Commonwealth of Puerto Rico fails. A reading of the local statute, Section 194(a) reads in pertinent part: "before a legislative, administrative or judicial forum in Puerto Rico". The same does not exclude federal fora within the Commonwealth. More so, the statute does not provide that the forum in Puerto Rico must exclusively be one of which is part of the Commonwealth government.

The Sarbares-Oxley Act., alluded to by defendant does not preempt plaintiff's state law claim. Section 1514 A(d) of said federal statute reads that "Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any employee under any Federal or State Law". At the time the federal legislation was enacted, Law 115 was already in effect.

This Report and Recommendation is issued pursuant to 28 U.S.C. § 636 and Local Rule 72(d).

**SO RECOMMENDED.**

Date: January 13, 2006

*/s/ Gustavo A. Gelpi*  
GUSTAVO A. GELPI  
United States Magistrate Judge

